Local Union 522, International Brotherhood of Teamsters, AFL–CIO *and* S. Kraus, Inc. d/b/a Skyline Windows and International Association of Bridge, Structural and Ornamental Iron Workers Union, Local 580, AFL–CIO and Glaziers Local 1087, International Brotherhood of Painters and Allied Trades, AFL–CIO. Case 2–CD–822

April 30, 1992

DECISION AND ORDER QUASHING NOTICE OF HEARING

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

The charge in this Section 10(k) proceeding was filed October 17, 1991, by the Employer, S. Kraus, Inc. d/b/a Skyline Windows, alleging that the Respondent, Local Union 522, International Brotherhood of Teamsters, AFL–CIO, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees represented by Local 522 rather than to employees represented by Glaziers Local 1087, International Brotherhood of Painters and Allied Trades, AFL–CIO, and by International Association of Bridge, Structural and Ornamental Iron Workers, Local 580, AFL–CIO. The hearing was held December 2, 1991, before Hearing Officer Stephen Berger. Thereafter, the Employer and Local 580 filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a New York corporation with its main place of business at 625 West 130th Street in New York City, is engaged in the retail sale, service, and installation of windows and related products. Annually, it derives gross revenues in excess of $500,000 and receives at its New York facility goods valued in excess of $50,000, from points located outside the State of New York. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. No stipulation regarding labor organization status for any of the Unions was obtained.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer and Local 522 have had a collective-bargaining relationship for a number of years. The current collective-bargaining agreement is effective from July 1, 1991, until June 30, 1994.

The dispute in the instant case involves the removal of old windows and installation of replacement windows in the Stuyvesant Town and Peter Cooper Village Houses in New York, New York. The buildings are owned by Metropolitan Life Insurance Company, and the Employer is a subcontractor on the job to Efco, a window manufacturer in Missouri. The jobsite consists of approximately 110 buildings and entails the removal and replacement of approximately 58,000 windows.

The Employer commenced work on or about August 19, 1990, with its employees represented by Local 522. The work is scheduled to be completed about Thanksgiving 1992.

On or about October 8, 1991, the Employer received a letter from Local 522's attorney advising the Employer that a jurisdictional dispute might exist among the Teamsters, Painters, and Iron Workers. The letter enclosed copies of correspondence received by the International Brotherhood of Teamsters involving these labor organizations, including, inter alia, a letter dated September 26, 1991, from the International Brotherhood of Painters to the effect that a jurisdictional dispute existed on the Stuyvesant Town and Peter Cooper job over window installation and requesting the Teamsters to assign a representative to contact a Painters representative; and a telefax dated September 23, 1991, from the International Association of Iron Workers advising that a dispute exists over window installation at the Stuyvesant Town and Peter Cooper job and requesting a Teamsters representative to contact an Iron Workers representative. None of the letters mentioned the name of the Employer.

The Employer's October 11, 1991 response to Local 522's attorney indicated that it did not desire to become embroiled in a dispute over the assignment of the work. The Employer stated:

> If, in order to avoid such a dispute among the organizations involved, the work in question must be assigned to persons or employees represented by the other labor organizations rather than to employees represented by Teamsters Local 522, then our client reluctantly will take the necessary steps to accomplish that end forthwith.

Local 522's response to the Employer's letter, also dated October 11, 1991, included the following message:

> Please be advised that Local 522 will not permit your client to abrogate the collective bargaining agreement and will take appropriate action to protect their rights under the contract.
>
> Any attempt by your client to avoid its contractual obligations will be dealt with appropriately.

On or about October 14, 1991, the Employer observed that picketing was taking place at the jobsite, with the picket signs stating something to the effect of ''522 against Skyline Window, unfair labor practices.'' The Employer recognized one of the picketers as an officer of Local 522. During the time the picketing was taking place, employees represented by Local 522 were not performing any work. That was the only day on which the Employer saw any picketing taking place. After October 14, the work resumed.

B. *Work in Dispute*

The disputed work concerns the assignment of the removal and replacement of windows at the buildings known as Stuyvesant Town and Peter Cooper Village in New York, New York.

C. *Contentions of the Parties*

The Employer takes the position that a jurisdictional dispute exists among the Teamsters, Painters, and Iron Workers over the work assigned to its employees represented by the Teamsters. In addition, the Employer contends that reasonable cause exists to believe that Local 522 violated Section 8(b)(4)(D) when it engaged in a work stoppage at the Stuyvesant Town and Peter Cooper Village worksites in furtherance of its claim to the work. The Employer further asserts that it has a collective-bargaining agreement with Local 522 which covers the work in question, but that it does not have collective-bargaining agreements with Local 1087 and Local 580, and that these and other factors, including employer preference, past practice, and economy and efficiency of operations, favor its continued assignment of the disputed work to its employees represented by Local 522.

Local 522 did not appear at the hearing. Locals 1087 and 580 appeared at the hearing for the limited purpose of stating their position that no jurisdictional dispute exists on the jobsite in question and that neither of them made a request to the Employer for the disputed work.

In its brief, Local 580 asserts that it believes the work in question belongs to employees represented by it, but that it wished to inform its own International of the situation in order to initiate dialogue among the International unions, and to contact the owner of the development and the construction manager for the project. Local 580 contends that its plan specifically excluded contact with the Employer: thus, no representative of Local 580 contacted the Employer to claim the work, and no picketing occurred, or threat to picket was made, by Local 580 to support such a claim. Finally, Local 580 contends that the events leading to the issuance of the notice of hearing indicate that the Employer and Local 522 contrived a work stoppage in the hope of getting the Board to conduct a 10(k) hearing.

D. *Applicability of the Statute*

We are of the opinion that the record in its entirety does not establish that a jurisdictional dispute exists here which is cognizable under Section 10(k) of the Act.

There is no substantial evidence that two of the three groups of employees before us are competing for the work described above. Thus, Locals 580 and 1087 have taken the position that no jurisdictional dispute exists on the jobsite in question and that neither of them made a request to the Employer for the work, nor did the Employer contact them to inquire as to whether they claimed the work in question.

The Board has repeatedly held that Sections 8(b)(4)(D) and 10(k) of the Act were intended to deal with disputes between two or more competing employee groups claiming the right to perform certain tasks, and not situations, as here, where there is a lack of competing claims. *Teamsters Local 839 (Shurtleff & Andrews Constructors)*, 249 NLRB 176, 177 (1980). Here, we find that the correspondence among the Unions did not ripen into competing claims for the work. Rather, it appears that the correspondence was designed to inform the respective International unions of the situation in order to initiate a dialogue among them and to seek their guidance and a resolution of the matter. Furthermore, after receiving copies of the interunion correspondence, the Employer in its response to Local 522 merely stated that the Employer would assign the work to Locals 580 and 1087 if the Unions could not resolve the work in question among themselves. In this regard, we note that in its letter to Local 522, the Employer did not in fact threaten to change the work assignment.[1]

Accordingly, in the circumstances here we find that there is no jurisdictional dispute within the meaning of Section 8(b)(4)(D) and Section 10(k) of the Act. We shall therefore quash the notice of hearing.

ORDER

The notice of hearing issued in this proceeding is quashed.

[1] Member Devaney finds it unnecessary to rely on the fact that the Employer did not threaten to change the work assignment after receiving copies of the interunion correspondence.